

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NORTH DAKOTA**

**PHOENIX CAPITAL GROUP  
HOLDINGS, LLC,**

**Plaintiff,**

**v.**

**INCLINE ENERGY PARTNERS, L.P.**

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**C.A. NO. 1:23-cv-00209**

**Defendant.**

**DEFENDANT’S MOTION FOR EXTENSION OF TIME TO RESPOND TO  
PLAINTIFF’S MOTION FOR LEAVE TO FILE AMENDED COMPLAINT**

Defendant Incline Energy Partners, LP (“Defendant”) moves the Court for an extension of time in which to respond to Plaintiff’s Motion for Leave to File Amended Complaint [Dkt. 30] (“the Motion”), and in support respectfully show the Court as follows.

1. Plaintiff filed this lawsuit on October 20, 2023. After conferring, Defendant moved to Stay or Dismiss pursuant to *Colorado River* abstention, or alternatively, to transfer venue to the Northern District of Texas. In the further alternative, Defendant moved to dismiss pursuant to Rule 12(b)(6). [Dkt. 6-9].

2. On February 23, 2024, Plaintiff moved for leave to “submit supplemental briefs in opposition to” Defendant’s pending motions (the “Motion to Supplement”). [Dkt. 23]. Defendant opposed the motion. [Dkt. 24].

3. On May 30, 2024, this Court granted the Motion to Supplement. [Dkt. 27].

4. On July 12, 2024, rather than submitting supplemental briefing and without conferring, Plaintiff filed a Motion for Leave to Amend, seeking to file an Amended Complaint, as well as a “Combined Supplemental Memorandum in Opposition to Pending

Motions to Dismiss and Memorandum in Support of Motion for Leave to File Amended Complaint,” and a 150 page supporting appendix. [Dkt. 30-32].

5. Incline’s response is currently due on July 26, 2024.

6. Due to prior and continuing obligations in other cases, including briefing due from Defendant’s counsel and hearing, arbitration, and trial dates in other matters during the same time period, Defendant respectfully moves the Court to extend the deadline for Defendant’s response to the Motion by thirty days, to August 26, 2024. These additional obligations include preparing a lengthy brief due on July 19, 2024; preparing a petition for mandamus for filing before the end of the week ending July 20; an Amicus Brief due in the Fifth Circuit on July 29, 2024 in an interlocutory appeal (in response to an 80 page brief), where Incline’s lead counsel is the court-appointed Receiver represented by Incline’s additional counsel; opposed hearings on July 23 and July 24; depositions noticed for July 25 and July 26; a court appearance where counsel will testify at a sentencing hearing on July 29 (in a separate matter where Incline’s lead counsel was also the court-appointed Receiver); a one-day trial set for July 31, 2024; and briefing due on several motions in Texas federal case related to this one, such as a Reply in support of a lengthy motion filed in that case, due on August 7, 2024.

7. Additionally, Defendant anticipates requesting certain materials pursuant to the Open Records Act, which bear directly on Plaintiff’s delay in seeking to amend, as well as the futility of its claims. The Open Records Act request is unlikely to receive a response in less than thirty-days.

8. This motion is made in good faith and not for the purpose of delay. Good cause exists for these extensions to allow counsel adequate time to prepare the responses and replies.

9. This is the first request for extensions of these deadlines.

10. In sum, the Defendant respectfully moves the Court to extend the deadline for Defendant's response to the Motion by thirty days, to August 26, 2024.

Dated this 18<sup>th</sup> day of July 2024.

Respectfully submitted,

By: /s/ Charlene C. Koonce

Charlene C. Koonce  
Texas Bar No. 11672850  
[charlene@brownfoxlaw.com](mailto:charlene@brownfoxlaw.com)  
BROWN FOX PLLC  
8111 Preston Road, Suite 300  
Dallas, TX 75225  
Tel. 214.327.5000  
Fax. 214.327.5001  
*Admitted Pro Hac Vice*

/s/ Joshua A. Swanson

Joshua A. Swanson  
North Dakota Bar No. 06788  
VOGEL LAW FIRM  
218 NP Avenue  
PO Box 1389  
Fargo, ND 58107-1389  
701.237.6983  
[jswanson@vogellaw.com](mailto:jswanson@vogellaw.com)

### **CERTIFICATE OF SERVICE**

Pursuant to Fed. R. Civ. P. 5(d)(1)(B), as amended, no certificate of service is necessary, because this document is being filed with the Court's electronic-filing system.

/s/ Joshua A. Swanson

Joshua A. Swanson